IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 443 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K N JADAV

Versus

KAMLESHKUMAR H AGRAVAL

Appearance:

MR BP TANNA for Petitioner

NOTICE SERVED for Respondent No. 1

MR SP DAVE, ADDITIONAL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/03/2000

ORAL JUDGEMENT

1. The appellant herein is a public servant working as Food Inspector in the Health Department of the Municipal Corporation of the City of Rajkot. The

appellant had filed a criminal complaint, being criminal case No.55 of 1985 against respondent No.1 in the court of the learned Judicial Magistrate, First Class, Rajkot under the provision of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act').

2. The said case was heard by the learned Magistrate, who, by his judgement and order dated 20-2-1990 was pleased to acquit the accused-respondent herein for the offence punishable under Section 7 of the Act read with Rule 16(1)(a)(1) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules'). The appellant has filed the present appeal against the said acquittal with leave.

3. Today when the appeal came up for final hearing, Mr. B.P. Tanna, learned advocate for the appellant (original complainant) read the evidence adduced before the trial court. Mr. S.P. Dave, learned APP also supported the submissions made by Shri B.P. Tanna. The respondent No.1 being the accused has been served with a notice but he has not entered appearance. The matter was examined for finding out whether it would be necessary to reissue notice of final hearing to the first accused. On going through the evidence as a whole, it would appear that no such notice would be necessary.

4. The accused faced aforesaid criminal case on these facts: He was carrying on the shop in the name and style of Shakti Devi Farm at Gymkhana Road at Rajkot. The complainant visited his shop on 26th July, 1983 and purchased samples of separate milk. After following necessary procedure, he sent one of the samples of the separate milk so purchased by him from the accused for its analysis. The Public Analyst, Vadodara reported that the sample did not conform to the standards of skimmed milk. In fact, the report indicates the words used in this fashion "as Separate Milk" and "Description :Milkish white liquid". It would appear from the report that the required milk fat is 2.3% instead of maximum 0.5% and the milk solid non fat is 8.33% instead of minimum 8.7%. the learned Magistrate however found that separate milk

should be dealt with as skimmed milk as categorised in Article 11.01.10 under the Act (Appendix B). According to this Article, skimmed milk means the product prepared from milk from which almost all the milk/fat has been removed mechanically. The learned Magistrate however has acquitted the accused on the ground that required procedure for taking of samples was not followed and the panchnama witnesses did not support the prosecution and that the complaint was filed late by one and a half years so that the accused was prejudiced in the sense that the accused was not able to exercise his right to send another sample for its analysis by the Central Food Laboratory. He has however held that it was for the accused to establish whether even after addition of formalin the sample could not remain preserved during the passage of time in the present case. He acquitted the accused person on the ground that the prosecution failed

to establish beyond reasonable doubt the procedure followed by it in taking up the sample. The learned Magisrate has also found that the prosecution had failed to establish that the sample milk was adulterated. Having gone through the evidence adduced before the learned Magistrate and having heard the learned advocate for the appellant as well as the learned APP, I am of the opinion that the conclusions and findings recorded by the learned Magistrate do not require any interference in this appeal.

5. In the result bearing in mind the facts of the case, this acquittal appeal is dismissed.

(M.S. Parikh, J.)

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